

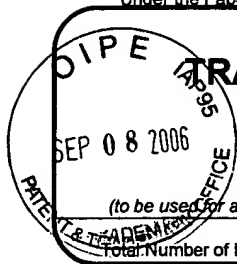
AFJW

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.



TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

28

Application Number	09/805,748
Filing Date	03/13/2001
First Named Inventor	Srinivas Gutta
Art Unit	2616
Examiner Name	James A. Fletcher
Attorney Docket Number	US 010064

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks Enclosed is an Amended Appeal Brief for which the fees were paid with the filing of the initial Appeal Brief on December 20, 2005, therefore no additional fees is due with the filing of this Appeal Brief.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	LEIMBACH ASSOCIATES		
Signature			
Printed name	James D. Leimbach		
Date	September 5, 2006	Reg. No.	34,374

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	James D. Leimbach	Date	September 5, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND

INTERFERENCES



In re Application of

Srinivas Gutta, et al.

DYNAMIC KEY FRAME
GENERATION USAGE

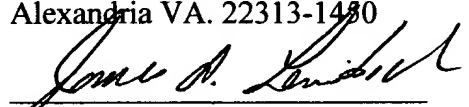
Serial No. 09/805,748

Filed: March 13, 2001

Group Art Unit: 2616

Examiner: James A. Fletcher

I hereby certify that this correspondence
is being deposited today with the
United States Postal Services as first
class mail in an envelope addressed to:
Mail Stop Appeal Brief-Patent
Commissioner for Patents
P.O. Box 1450
Alexandria VA. 22313-1450


Name: James D. Leimbach

Registration No. 34,374

Date: Date: September 5, 2006

Mail Stop Appeal Brief-Patent
Honorable Commissioner of Patents and Trademarks
Alexandria VA. 22313-1450

Sir:

AMENDED APPEAL BRIEF UNDER 37 C.F.R. § 41.37(d)

Serial No. 09/805,748

Real party in interest

The real party of interest is the Assignee who is U. S. Philips Corporation, a corporation existing under the laws of the State of Delaware (hereinafter Appellant).

Related appeals and interferences

There are no related appeals or interferences to the present application that are known to appellants, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of the Claims

Claims 1-60 are drawn to a method and system for processing video frames. Claims 1-12, 14-42, and 44-60 stand rejected and claims 13 and 43 are objected to as being dependent upon a rejected claim. Claims 1-12, 14-42, and 44-60 are the claims that are currently being appealed. A copy of claims 1-12, 14-42, and 44-60 is contained in Appendix III following this brief.

Status of the Amendments After Final

There was no response filed to the Final Office Action mailed February 8, 2006. The Final Office Action mailed February 8, 2006 was in response to an Appeal Brief that was submitted by the appellants on December 20, 2005. The Final Office Action mailed on February 8, 2006 states that claims 13 and 43 are allowable. The Final Office Action mailed on February 8, 2006 further replaced the former rejection under 35 U.S.C.

§102(b) with another anticipation rejection under 35 U.S.C. §102(e). Otherwise, the Final Office Action mailed on February 8, 2006 contains the same rejections that were appealed in the Appeal Brief submitted by the appellants on December 20, 2005. Therefore, the appellants hereby renew the appeal of the claims 1-12, 14-42, and 44-60. A Notice of Appeal was filed on May 5, 2006. There has been no Advisory Action mailed. Accordingly, it is assumed that the rejections to claims 1-12, 14-42, and 44-60 under 35 U.S.C. §102(e) and 35 U.S.C. §103(a) stand.

Summary of the Claimed Subject Matter

The appealed claims define subject matter for a method and system for processing video frames. Video frames are received and executed by a processing device. As the frames are being executed, a subset of key frames is extracted in accordance with a frame extraction algorithm. The extracting of key frames is terminated prior to the completion of the execution of video frames allowing the user to review the key frames on a display. See Abstract.

Appealed claim 1 defines subject matter for a method for processing video source frames within a display device. As illustrated in Figure 1, the invention employs a video processing system (VPS) 10 as part of the display device 20 that includes a processor 12, a memory structure 14, and a video input device 18, wherein the processor 12 is coupled to the memory structure 14 and to the video input device 18 (page 3, lines 10-16). Appealed claim 1, as illustrated in Figure 1, further defines subject matter for inputting video source frames from a video source 30 into the VPS 10 through the video input device 18 (page 4, lines 4-21 of the specification). Executing the video source frames by the processor is taught on page 6, lines 8-15 of the specification. Dynamically and non-contiguously extracting of key frames from the video source frames during the executing is taught on page 5, lines 6-19 and page 6, lines 8-15 of the specification. The extracting implemented in accordance with a frame extraction algorithm stored in memory and executed by processor 12 is taught on page 6, line 16-page 7, line 13 of the specification.

Appealed claim 1 further defines storing the extracted key frames in a first memory of the memory structure 14 and executing as taught on page 7, lines 14-18. The terminating of the extracting of key frames prior to completion of the executing of the video source frames is taught on page 8, lines 8-9 of the specification.

Appealed claim 31 defines subject matter for a display system for processing video frames, including a video frame extraction algorithm (see page 6, line 16-page 7, line 13 of the specification) within the display system that dynamically and non-contiguously extracts key frames from the video source frames during execution of the video source frames (page 5, lines 6-19 and page 6, lines 8-15 of the specification). A processor 12 within the display system executes the video source frames and executes the video frame extraction algorithm (see description on page 6, line 16-page 7, line 13 of the specification). A video input device 18 within the display system receives the video source frames from a video source, wherein the video input device is coupled to the processor (see page 4, lines 4-21 of the specification and Figure 1). Appealed claim 31 further defines subject matter for a memory structure 14 within the display system that is coupled to the processor (see Figure 1), wherein the memory structure stores the video frame extraction algorithm (page 6, line 16-page 7, line 13 of the specification), and wherein a first memory of the memory structure stores the extracted key frames (page 7, lines 14-18) and a terminating mechanism within the display system that terminates extraction of the key frames prior to completion of execution of the video source frames (page 8, lines 8-9 of the specification).

Grounds of Rejection to be Reviewed on Appeal

The Final Office Action mailed February 8, 2006 rejects claims 1-12, 14-42 and 44-60. Claims 1-12, 14-42 and 44-60 are the claims that are being appealed. Appealed claims 1, 2, 4-10, 14-17, 19-32, 34-40, 44-47 and 49-60 are rejected under the provisions of 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,473,095 issued in the name of Martino et al. (hereinafter referred to as *Martino et al.*) and U.S. Patent No. 6,137,544

issued in the name of Dimitrova et al. (hereinafter referred to as *Dimitrova et al.*).

Appealed claims 3, 11-12, 33, and 41-42 are rejected under the provisions of 35 U.S.C. §103(a) as been obvious over *Martino et al.* in view of *Dimitrova et al.*

Argument

I. The rejection of appealed claims 1, 2, 4-10, 14-17, 19-32, 34-40, 44-47 and 49-60 under the provisions of 35 U.S.C. §102(e) as being anticipated via by *Martino et al.* and *Dimitrova et al.*

A. The rejection under 35 U.S.C. S 102(e)

Appealed claims 1, 2, 4-10, 14-17, 19-32, 34-40, 44-47 and 49-60 stand rejected under the provisions of 35 U.S.C. §102(e) as being anticipated by *Marino et al.* (U.S. Patent No. 6,473,095) and *Dimitrova et al.* (U.S. Patent No. 6,137,544). The rejection states that *Marino et al.* incorporates by reference the disclosure of *Dimitrova et al.* and that these two references disclose every element defined by appealed claims 1, 2, 4-10, 14-17, 19-32, 34-40, 44-47 and 49-60.

The MPEP at §2131 states the present Patent Office policy for anticipation as a "claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

B. The references

Marino et al. (U.S. Patent No. 6,473,095) identifies video content by identifying key frames within that content. Histograms are formed from the key frames and grouped into families. These family histograms can be used to characterize the video content (see Abstract). *Marino et al.* teach to locate key frames and store key frame numbers. The key frame numbers **must** be retained throughout the procedure taught by *Marino et al.* Identification of key frames can be done in accordance with the procedures taught by *Dimitrova et al.* (see col. 1, lines 50-55). A histogram is formed for each key

frame. The histograms give a numerical value for each color and the histograms are used to describe every image by a number of colors. Each histogram must be associated with a frame number (see col. 1, lines 56-65).

Marino et al. teach that the histograms can be used to characterize video content. Histograms are defined for a key frame and key frames are compared with other stored key frames. A threshold is used to determine if histograms are similar (see col. 2, lines 41-45). Histograms are grouped into families using the threshold (see col. 3, lines 6-13). Families can be used to determine program boundaries within the video content (see col. 3, lines 65-67). Figure 3 illustrates a program boundary between H_7 and H_6 . The appellants, respectfully, point out that program boundary between H_7 and H_6 is mentioned on col. 4 lines 21-22 of *Marino et al.* It should be noted that col. 4 lines 21-22 states that the program boundary is placed between H_7 and H_6 in accordance with box 209 of Figure 2; however, there is no box 209 within Figure 2.

Note that *Marino et al.* do not disclose or suggest dynamically and non-contiguously extracting key frames from the video source frames during the executing. Furthermore, *Marino et al.* do not disclose or suggest storing the extracted key frames in a first memory of the memory structure. Additionally, *Marino et al.* do not disclose or suggest terminating the extracting of key frames prior to the completion of the execution of the video source frames.

Dimitrova et al. (U.S. Patent No. 6,137,544) teach a video indexing system that analyzes the contents of source video and develops a visual video table of contents (see Abstract). The system of *Dimitrova et al.* detects significant scenes and keyframe filtering filters out the less desirable frames (see Abstract). *Dimitrova et al.* teach that a processor is used to format the video signal into frames (see col. 3, lines 19-22). The processor separates each frame into blocks and transforms each of the blocks using a discrete cosine transform (DCT), performs significant scene detection using and key frame selection, and stores the key frames as a data structures (see col. 3, lines 23-28). Note that col. 3, lines 23-26 of *Dimitrova et al.* do not disclose or suggest that key frames are extracted “non-contiguously”. Furthermore, it should be noted that *Dimitrova et al.* do not disclose or suggest that a first memory of the memory structure stores the key frames.

Dimitrova et al. teach that the key frames can be used as a video index. If the recording is not completed at one time, a partially created video index can be stored (see col. 3, lines 39-42). Note that *Dimitrova et al.* do not disclose or suggest any termination of the extracting of key frames prior to completion of executing of the video source frames.

C. The differences between the invention and the references

Appealed claims 1 and 31

Appealed claims 1 and 31 define subject matter for processing video source frames within a display device, including employing a video processing system (VPS) as part of the display device that includes a processor, a memory structure, and a video input device, wherein the processor is coupled to the memory structure and to the video input device. Appealed claims 1 and 31 further define subject matter for inputting video source frames from a video source into the VPS through the video input device and executing the video source frames by the processor.

Appealed claims 1 and 31 still further define subject matter for dynamically and non-contiguously extracting key frames from the video source frames during the executing, with the extracting being implemented in accordance with a frame extraction algorithm that is stored in the memory structure and executed by the processor. The rejection alleges that col. 3, lines 23-26 of *Dimitrova et al.* disclose that key frames are extracted “non-contiguously”. The appellants, respectfully point out that col. 3, lines 23-26 of *Dimitrova et al.* disclose that significant scene detection is performed along with key frame selection, and that key frames are stored as data structures. The entire premise of *Dimitrova et al.* is based on significant scenes and key frames for those scenes. There is no disclosure or suggestion within *Dimitrova et al.* that key frames are extracted “non-contiguously”.

The rejection asserts that col. 3, lines 23-28 of *Dimitrova et al.* disclose that a first memory of the memory structure stores the key frames. The appellants assert that col. 3, lines 23-28 of *Dimitrova et al.* disclose key frames are stored in a memory, disk or

other storage medium and that *Dimitrova et al.* do not disclose or suggest that a first memory of the memory structure stores the key frames.

The rejection alleges that col. 3, lines 23-28 of *Dimitrova et al.* disclose that the termination of extracting key frames is accomplished prior to the completion of executing of the video source frames. The appellants, respectfully, assert that the statement made by *Dimitrova et al.* that if the recording is not completed at one time, a partially created video index can be stored (see col. 3, lines 39-42) is not a disclosure or a suggestion for any termination of the extracting of key frames prior to completion of executing of the video source frames.

Appealed claims 2, 4, 5, 32, 34 and 35

Appealed claims 2, 4, 5 32, 34 and 25 define subject matter for the first memory includes a temporary memory. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for storing the extracted key frames in a first memory of the memory structure wherein the first memory includes a temporary memory.

Appealed claims 6 and 36

Appealed claims 6 and 36 define subject matter for recording in the first memory an indication of a video source frame being executed when the extraction of key frames is terminated. The rejection asserts that Figure 1 of *Dimitrova et al.* illustrates the recording of key frame data to tape or memory. The appellants, respectfully, point out that that appealed claims 6 and 36 define subject matter for recording in the first memory an indication of a video source frame being executed when the extraction of key frames is terminated. Therefore, this rejection does not address the subject matter of appealed claims 6 and 36. This rejection does not address recording in the first memory. This rejection does not address that which is being recorded is an indication of a video source frame being executed when the extraction of key frames is terminated. There is no disclosure or suggestion within *Dimitrova et al.* for recording in the first memory an indication of a video source frame being executed when the extraction of key frames is terminated.

Appealed claims 7 and 37

Appealed claims 7 and 37 define subject matter for wherein recording in the first memory comprises generating a special key frame that includes the indication of the video source frame being executed when the extraction of key frames is terminated, and further comprising appending the special key frame to the extracted key frames in the first memory. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for the first memory comprises generating a special key frame that includes the indication of the video source frame being executed when the extraction of key frames is terminated, and further comprising appending the special key frame to the extracted key frames in the first memory.

Appealed claims 9 and 39

Appealed claims 9 and 39 defines subject matter for the terminating being triggered by action of a user of the VPS, wherein the action includes a manipulating by the user of a user input device. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for the terminating being triggered by action of a user of the VPS, wherein the action includes a manipulating by the user of a user input device.

Appealed claims 10 and 40

Appealed claims 10, 40 define the subject matter of appealed claim 1 and appealed claim 31, respectively, and additionally define the subject matter for terminating the extracting at a time when a predetermined condition has occurred. The Examiner's position is that the statement on col. 3, lines 40-43 of *Dimitrova et al.* that "if the tape, or file, is not completely recorded on at one time, a partially created video index could be saved on the tape, file, etc. or could be saved in a tape memory for later additions" disclose terminating the processing of the video source frames when a predetermined condition has occurred. The appellants, respectfully, assert that this assertion contained in the rejection does not address the predetermined condition. Appealed claims 10 and 40 define subject matter for a predetermined condition for terminating the extraction of key frames prior to

completion of executing the video source frames. The statement that “if the tape, or file, is not completely recorded on at one time, a partially created video index could be saved on the tape, file, etc. or could be saved in a tape memory for later additions” within *Dimitrova et al.* does not disclose or suggest any predetermined condition for terminating the extraction of key frames prior to completion of executing the video source frames. The appellants, respectfully, point out that the terminating of the extraction of key frames is defined to occur prior to the completion of the executing of the video source frames. The statement that “if the tape, or file, is not completely recorded on at one time, a partially created video index could be saved on the tape, file, etc. or could be saved in a tape memory for later additions” within *Dimitrova et al.* does not disclose or suggest terminating the extraction of key frames prior to completion of executing the video source frames.

Appealed claims 14 and 44

Appealed claims 14 and 44 define subject matter for reviewing the key frames by a user of the VPS, wherein the reviewing occurs through an output display that is coupled to the processor. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for reviewing the key frames by a user of the VPS, wherein the reviewing occurs through an output display that is coupled to the processor.

Appealed claims 16-18 and 46-48

Appealed claims 16-18 and 46-48 define subject matter for reviewing the key frames by a user of the VPS, wherein the reviewing occurs prior to completion of executing the video source frames, wherein the reviewing occurs at or after the terminating, wherein the reviewing occurs prior to the terminating. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for reviewing the key frames by a user of the VPS, wherein the reviewing occurs prior to completion of executing the video source frames, wherein the reviewing occurs at or after the terminating, wherein the reviewing occurs prior to the terminating.

Appealed claims 19 and 49

Appealed claims 19 and 49 define subject matter for reviewing the key frames by a user of the VPS, wherein the reviewing occurs at or after completion of executing the video source frames. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for reviewing the key frames by a user of the VPS, wherein the reviewing occurs at or after completion of executing the video source frames.

Appealed claims 20 and 50

Appealed claims 20 and 50 define subject matter for reviewing the key frames by a user of the VPS, wherein at or after completion of the reviewing, erasing the key frames from the first memory. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for reviewing the key frames by a user of the VPS, wherein at or after completion of the reviewing, erasing the key frames from the first memory.

Appealed claims 23, 24, 53 and 54

Appealed claims 23, 24, 53 and 54 define subject matter for reviewing the key frames by a user of the VPS, wherein the erasing occurs at a time when a predetermined condition has occurred and the predetermined condition includes completion of the executing of the video source frames. There is no disclosure or suggestion within *Dimitrova et al.* or *Marino et al.* for reviewing the key frames by a user of the VPS, wherein the erasing occurs at a time when a predetermined condition has occurred and the predetermined condition includes completion of the executing of the video source frames.

II. The rejection of appealed claims 3, 11-12, 33, and 41-42 under the provisions of 35 U.S.C. §103(a) as been obvious over *Martino et al.* in view of *Dimitrova et al.*

A. The rejection under 35 U.S.C. S 103(a)

Appealed claims 3, 11-12, 33, and 41-42 are rejected under the provisions of 35 U.S.C. §103(a) as been obvious over *Martino et al.* in view of *Dimitrova et al.*

The MPEP at §2143 provides the basic requirements of a *Prima Facie* case of obviousness in stating that in order to “establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).”

The appellants draw the Board's attention to the specific language of 35 U.S.C. 103(c) related to conditions for patentability and non-obvious subject matter.

35 U.S.C. 103(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

B. The references

Marino et al. (U.S. Patent No. 6,473,095) issued on October 29, 2002. The present application for invention was filed on March 13, 2001. The appellants, respectfully, assert that the present application for invention and the reference, *Marino et al.*, were owned by, or subject to an obligation of assignment to, the same person at the time of the present invention was made. A copy of the assignment of the present application for invention to the same assignee as for *Marino et al.* is contained within the file for the present application for invention. Additionally, a copy of the assignment of the present application for invention to the same assignee as for *Marino et al.* was included within Appendix II of the originally filed Appeal Brief submitted December 20, 2005. Therefore, *Marino et al.* may not be used as a reference in a combination for an obviousness rejection because *Marino et al.* is only available as a reference under the provisions of 35 U.S.C. §102(e). 35 U.S.C. 103(c)(1) specifically states that subject matter

developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. As previously discussed *Marino et al.* and the present application for invention were, at the time the present application for invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Additionally, *Dimitrova et al.* may not be used as a reference in a combination for an obviousness rejection because *Dimitrova et al.* is only available as a reference under the provisions of 35 U.S.C. §102(e). 35 U.S.C. 103(c)(1) specifically states that subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of **section 102** of this title, shall not preclude patentability where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. As previously discussed *Dimitrova et al.* and the present application for invention were, at the time the present application for invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Accordingly, the combination of *Marino et al.* with *Dimitrova et al.*, as made by the rejection, is not a proper combination because these references are only available as references under the provisions of 35 U.S.C. §102(e), and the subject matter of *Marino et al.*, *Dimitrova et al.* and the present application for invention were, at the time the present application for invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The foregoing discussion regarding the rejection under the provisions of 35 U.S.C. §102(e) discussed that neither *Marino et al.* nor *Dimitrova et al.* anticipate the subject matter defined by the independent claims. *Marino et al.* can not be used as a reference under the provisions 35 U.S.C. 103(a) because under the provisions of 35 U.S.C. 103(c), subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at

the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The appellants, respectfully, draw the Board's attention to the last paragraph of the Advisory Action dated September 8, 2005. The Examiner alleges that the "applicant's representative has stated that the application and the reference were commonly owned at the time of filing, which is not sufficient to disqualify the reference under 35 U.S.C. §103." The Examiner's rationale is based upon the Examiner's interpretation of MPEP§706.02(l) which states that "the applicant's representative's statement is not sufficient according to MPEP§706.02(l), which states that the application and the reference must be owned by, or subject to an obligation of assignment to, the same person at the time of the invention was made." The appellants, respectfully, assert that the statement made in response filed August 17, 2005 to the Final Office Action dated June 15, 2005 that "Marino et al. was also commonly owned with the present application for invention at the time of filing for the present application for invention" is sufficient to disqualify *Marino et al.* as a reference for the following reason. *Marino et al.* do not qualify as a reference under the provisions of 35 U.S.C. §102(a) or 35 U.S.C. §102(b). In fact *Marino et al.* do not qualify as a reference under any of the provisions of 35 U.S.C. §102 because *Marino et al.* was still pending and had not been published. The appellants, respectfully, assert that the present application for invention and the reference, *Marino et al.*, were owned by, or subject to an obligation of assignment to, the same person at the time of the present invention was made. A copy of the of the assignment of the present application for invention to the same assignee for that of *Marino et al.* is contained within the file for the present application for invention as well as Appendix II of the Appeal Brief as originally filed on December 20, 2005.

The appellants, respectfully, assert that the present application for invention and the reference, *Dimitrova et al.*, were also owned by, or subject to an obligation of assignment to, the same person at the time of the present invention was made. A copy of the of the assignment of the present application for invention to the same assignee for that of *Dimitrova et al.* was presented in Appendix II of the Appeal Brief as originally filed on December 20, 2005.

Marino et al. (U.S. Patent No. 6,473,095) identifies video content by identifying key frames within that content. Histograms are formed from the key frames and grouped into

families. These family histograms can be used to characterize the video content (see Abstract). *Marino et al.* teach to locate key frames and store key frame numbers. The key frame numbers must be retained throughout the procedure taught by *Marino et al.* Identification of key frames can be done in accordance with the procedures taught by *Dimitrova et al.* (see col. 1, lines 50-55). A histogram is formed for each key frame. The histograms give a numerical value for each color and the histograms are used to describe every image by a number of colors. Each histogram must be associated with a frame number (see col. 1, lines 56-65).

Marino et al. teach that the histograms can be used to characterize video content. Histograms are defined for a key frame and key frames are compared with other stored key frames. A threshold is used to determine if histograms are similar (see col. 2, lines 41-45). Histograms are grouped into families using the threshold (see col. 3, lines 6-13). Families can be used to determine program boundaries within the video content (see col. 3, lines 65-67). Figure 3 illustrates a program boundary between H₇ and H₆. The appellants, respectfully, point out that program boundary between H₇ and H₆ is mentioned on col. 4 lines 21-22 of *Marino et al.* It should be noted that col. 4 lines 21-22 states that the program boundary is placed between H₇ and H₆ in accordance with box 209 of Figure 2; however, there is no box 209 within Figure 2.

Note that *Marino et al.* do not disclose or suggest dynamically and non-contiguously extracting key frames from the video source frames during the executing. Furthermore, *Marino et al.* do not disclose or suggest storing the extracted key frames in a first memory of the memory structure. Additionally, *Marino et al.* do not disclose or suggest terminating the extracting of key frames prior to the completion of the execution of the video source frames.

Dimitrova et al. (U.S. Patent No. 6,137,544) teach a video indexing system that analyzes the contents of source video. The system of *Dimitrova et al.* detects significant scenes and keyframe filtering filters out the less desirable frames (see Abstract). *Dimitrova et al.* teach that a processor is used to format the video signal into frames (see col. 3, lines 19-22). The processor separates each frame into blocks and transforms each of the blocks using a discrete cosine transform (DCT), performs significant scene detection using and key frame selection, and stores the key frames as a data structures (see col. 3,

lines 23-28). Note that col. 3, lines 23-26 of *Dimitrova et al.* do not disclose or suggest that key frames are extracted “non-contiguously”. Furthermore, it should be noted that *Dimitrova et al.* do not disclose or suggest that a first memory of the memory structure stores the key frames.

Dimitrova et al. teach that the key frames can be used as a video index. If the recording is not completed at one time, a partially created video index can be stored (see col. 3, lines 39-42). Note that *Dimitrova et al.* do not disclose or suggest any termination of the extracting of key frames prior to completion of executing of the video source frames.

C. The differences between the invention and the references

Appealed claims 3 and 33

Appealed claims 3 and 33, respectively define the subject matter of appealed claims 2 and 32 for the first memory includes a temporary memory, wherein the temporary memory includes a random access memory (RAM). The first memory of the memory structure is defined to store the extracted key frames. There is no disclosure or suggestion within *Marino et al.* or *Dimitrova et al.* for a first memory as defined by appealed claims 3 and 33 that is a temporary memory used to store the extracted key frames.

Appealed claims 11, 12, 41 and 42

Appealed claims 11, 12 define the subject matter of appealed claim 10 for terminating the extracting at a time when a predetermined condition has occurred and appealed claims 41, 42 define the subject matter of appealed claim 40 for terminating the extracting at a time when a predetermined condition has occurred. The Examiner’s position is that the statement on col. 3, lines 40-43 of *Dimitrova et al.* that “if the tape, or file, is not completely recorded on at one time, a partially created video index could be saved on the tape, file, etc. or could be saved in a tape memory for later additions” disclose terminating the processing of the video source frames when a predetermined condition has occurred. The appellants, respectfully, assert that this assertion contained in the rejection

does not address the predetermined condition. Appealed claims 10 and 40 define subject matter for a predetermined condition for terminating the extraction of key frames prior to completion of executing the video source frames. The states that “if the tape, or file, is not completely recorded on at one time, a partially created video index could be saved on the tape, file, etc. or could be saved in a tape memory for later additions” within *Dimitrova et al.* does not disclose or suggest any predetermined condition for terminating the extraction of key frames prior to completion of executing the video source frames. The appellants, respectfully, point out that the terminating of the extraction of key frames is defined to occur prior to the completion of the executing of the video source frames. The statement that “if the tape, or file, is not completely recorded on at one time, a partially created video index could be saved on the tape, file, etc. or could be saved in a tape memory for later additions” within *Dimitrova et al.* does not disclose or suggest terminating the extraction of key frames prior to completion of executing the video source frames.

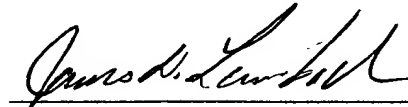
Appealed claims 11 and 41 define the subject matter for the predetermined condition to include execution of a predetermined fraction or percentage of the video source frames. Appealed claims 12 and 42 define wherein the predetermined condition includes execution of a predetermined number of video source frames. The Examiner has taken Office Notice of the subject matter defined by appealed claims 11, 12, 41 and 42. To substantiate this Office Notice, the Examiner cites U.S. Patent No. 6,567,985 issued in the name of Ishii (hereinafter referred to as *Ishii*). The appellant, respectfully, assert that *Ishii* does or disclose or suggest using either a predetermined fraction or percentage of the video source frames or a predetermined number of video source frames to terminate the processing of the video source frames.

Conclusion

In summary, the examiner's rejections of the claims are believed to be in error for the reasons explained above. The rejections of each of claims 1-12, 14-42 and 44-60 should be reversed.

The Commissioner is hereby authorized to charge any fees associated with the filing of this appeal brief to Account No. 50-3745, including extension fees.

Respectfully submitted,



James D. Leimbach
Attorney for Appellants
Registration No. 34,374

Telephone: (585) 820-6729
Facsimile: (585) 381-9983

APPENDIX I. Evidence on Appeal

“None”

APPENDIX II. Related Proceedings

“None”

APPENDIX III. Claims on Appeal

1. A method for processing video source frames within a display device, comprising:
 - employing a video processing system (VPS) as part of the display device that includes a processor, a memory structure, and a video input device, wherein the processor is coupled to the memory structure and to the video input device;
 - inputting video source frames from a video source into the VPS through the video input device;
 - executing the video source frames, by the processor;
 - dynamically and non-contiguously extracting key frames from the video source frames during the executing, said extracting implemented in accordance with a frame extraction algorithm that is stored in the memory structure and executed by the processor;
 - storing the extracted key frames in a first memory of the memory structure; and
 - terminating extracting key frames prior to completion of said executing of the video source frames.
2. The method of Claim 1, wherein the first memory includes a temporary memory.
3. The method of Claim 2, wherein the temporary memory includes a random access memory (RAM).
4. The method of Claim 1, wherein the first memory includes a permanent memory.
5. The method of Claim 4, wherein the permanent memory includes hard disk memory.
6. The method of Claim 1, further comprising recording in the first memory an indication of a video source frame being executed when the terminating occurred.

7. The method of Claim 6, wherein recording in the first memory comprises generating a special key frame that includes the indication, and further comprising appending the special key frame to the extracted key frames in the first memory.
8. The method of Claim 1, wherein the terminating is triggered by action of a user of the VPS.
9. The method of Claim 8, wherein the action includes a manipulating by the user of a user input device.
10. The method of Claim 1, wherein the terminating occurs at a time when a predetermined condition has occurred.
11. The method of Claim 10, wherein the predetermined condition includes execution of a predetermined fraction or percentage of the video source frames.
12. The method of Claim 10, wherein the predetermined condition includes execution of a predetermined number of video source frames.
14. The method of Claim 1, further comprising reviewing the key frames by a user of the VPS, wherein the reviewing occurs through an output display that is coupled to the processor.
15. The method of Claim 14, wherein the output display includes a television screen or a computer monitor.
16. The method of Claim 14, wherein the reviewing occurs prior to completion of executing the video source frames.
17. The method of Claim 16, wherein the reviewing occurs at or after the terminating.
18. The method of Claim 16, wherein the reviewing occurs prior to the terminating.

19. The method of Claim 14, wherein the reviewing occurs at or after completion of executing the video source frames.
20. The method of Claim 14, further comprising at or after completion of the reviewing, erasing the key frames from the first memory.
21. The method of Claim 20, wherein the erasing is triggered by action of the user.
22. The method of Claim 21, wherein the action includes a manipulating by the user of a user input device.
23. The method of Claim 20, wherein the erasing occurs at a time when a predetermined condition has occurred.
24. The method of Claim 23, wherein the predetermined condition includes completion of the executing of the video source frames.
25. The method of Claim 23, wherein the predetermined condition includes an elapse of a predetermined amount of time following the reviewing.
26. The method of Claim 14, further comprising after completion of the reviewing, copying the key frames from the first memory to a second memory of the memory structure, wherein the second memory includes a removable memory.
27. The method of Claim 26, further comprising after completion of the copying, erasing the key frames from the first memory.
28. The method of Claim 1, wherein the video frame extraction algorithm comprises a content-based method of video frame extraction.

29. The method of Claim 28, wherein the content-based method includes a keyframe scene detection method selected from the group consisting of a Method One keyframe scene detection method, a Method Two keyframe scene detection method, a Method Three keyframe scene detection method, and a Method Four keyframe scene detection method.

30. The method of Claim 1, wherein the video frame extraction algorithm comprises a content-independent method of video frame extraction.

31. A display system for processing video frames, comprising:

- a video frame extraction algorithm within the display system that dynamically and non-contiguously extracts key frames from the video source frames during execution of the video source frames;

- a processor within the display system that executes the video source frames and executes the video frame extraction algorithm;

- a video input device within the display system that receives the video source frames from a video source, wherein the video input device is coupled to the processor;

- a memory structure within the display system that is coupled to the processor, wherein the memory structure stores the video frame extraction algorithm, and wherein a first memory of the memory structure stores the extracted key frames; and

- a terminating mechanism within the display system that terminates extraction of the key frames prior to completion of execution of the video source frames.

32. The system of Claim 31, wherein the first memory includes a temporary memory.

33. The system of Claim 32, wherein the temporary memory includes a random access memory (RAM).

34. The system of Claim 31, wherein the first memory includes a permanent memory.

35. The system of Claim 34, wherein the permanent memory includes hard disk memory.
36. The system of Claim 31, further comprising a recording mechanism that records in the first memory an indication of a video source frame being executed when the extraction of key frames is terminated.
37. The system of Claim 36, wherein the receiving mechanism records the indication in a special key frame that is appended to the extracted key frames.
38. The system of Claim 31, wherein the terminating mechanism includes a user-controlled device.
39. The system of Claim 38, wherein the user-controlled device includes a user input device that is coupled to the processor.
40. The system of Claim 31, wherein the terminating mechanism terminates the extracting at a time when a predetermined condition has occurred.
41. The system of Claim 40, wherein the predetermined condition includes execution of a predetermined fraction or percentage of the video source frames.
42. The system of Claim 40, wherein the predetermined condition includes execution of a predetermined number of video source frames.
44. The system of Claim 31, further comprising an output display through which a user may review the extracted key frames, wherein the output display is coupled to the processor.
45. The system of Claim 44, wherein the output display includes a television screen or a computer monitor.

46. The system of Claim 44, wherein the system permits review of the key frames prior to completion of execution of the video source frames.
47. The system of Claim 46, wherein the system permits review of the key frames when or after the terminating mechanism terminates extracting the key frames.
48. The system of Claim 46, wherein the system permits review of the key frames before the terminating mechanism terminates extracting the key frames.
49. The system of Claim 44, wherein the system permits receive of the key frames upon or after completion of execution of the video source frames.
50. The system of Claim 44, further comprising ~~and~~ an erasing mechanism that erases the key frames from the first memory at or after completion of review of the key frames by the user.
51. The system of Claim 50, wherein the erasing mechanism is triggered by action of the user.
52. The system of Claim 51, further comprising a user input device, wherein the action includes the user manipulation of the user input device.
53. The system of Claim 50, wherein the erasing mechanism is triggered when a predetermined condition has occurred.
54. The system of Claim 53, wherein the predetermined condition includes completion of execution of the video source frames.
55. The system of Claim 53, wherein the predetermined condition includes an elapse of a predetermined amount of time following the review of the key frames.

56. The system of Claim 31, further comprising a second memory of the memory structure and a transferring mechanism, wherein the transferring mechanism transfers the key frames from the first memory to the second memory, and wherein the second memory includes a removable memory.

57. The system of Claim 56, further comprising an erasing mechanism that erases the key frames from the first memory after the transferring mechanism completes transfer of the keyframes from the first memory to the second memory.

58. The system of Claim 31, wherein the video frame extraction algorithm comprises a content-based method of video frame extraction.

59. The system of Claim 58, wherein the content-based method includes a keyframe scene detection method selected from the group consisting of a Method One keyframe scene detection method, a Method Two keyframe scene detection method, a Method Three keyframe scene detection method, and a Method Four keyframe scene detection method.

60. The system of Claim 31, wherein the video frame extraction algorithm comprises a content-independent method of video frame extraction.